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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,000	04/26/2001	Frank Charles Pagano	Rev 98-25	7885

7590

04/10/2002

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 04/10/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/843,000

Applicant(s)

PAGANO ET AL.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claims 1-20 are included in the prosecution of this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by

Pagano et al (5772988).

Pagano et al disclose a nail composition containing butyl acetate, a polymer with a polar monomer (acrylic acid), pigments, a suspending agent (stearalkonium bentonite), silicone glycol copolymer, and a plasticizer (glyceryl tribenzoate) in instant amounts (Note examples). Further, Pagano teaches an aqueous nail enamel composition (Note example 8). The composition can be in a kit (Note example 1) with a cellulose polymer. The nail enamel was tested and has instant nail residual effect (Note example 3).

**Claims 1, 5-13 are rejected under 35 U.S.C. 102(b) as being anticipated by
Calello et al (5607665).**

Calello et al teach a nail enamel composition containing an aqueous solvent, acrylic polymer, pigment, silicone glycol copolymer, and an associative thickener (polyurethane dispersion) in instant amounts (Note example 1). The polymer has instant

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glass transition temperature and at least one monomer within instant range (col. 2, lines 25-66).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4, 12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calello et al (5607665).

As set forth above, Calello et al teach a nail enamel composition containing an aqueous solvent, acrylic polymer, pigment, silicone glycol copolymer, and an associative thickener (polyurethane dispersion) in instant amounts (Note example 1). The polymer has instant glass transition temperature and at least one monomer within instant range (col. 2, lines 25-66). Calello provides a general composition with a non-aqueous based solvent in a range of 0.1-85% and instant plasticizers in the range of .01%-40% (col. 3, lines 35-40). Further, the reference provides an example with the non-aqueous solvent (ethyl acetate) in the amount of 6% (Example 2). Calello teaches montmorillonite mineral as a suspending agent (col. 3, lines 46-47).

Calello et al do not provide a specific example of nail enamel with the instant amount of non-aqueous solvent or an example with a plasticizer. Further, montmorillonite mineral in an example is not provided.

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Since Calello et al provides the general guidance to make nail enamel with a non-aqueous base, it is deemed obvious to one of ordinary skill in the art at the time the invention was made to manipulate the range of components used to yield the desired effect. Further, Calello et al suggests the use of a plasticizer in the formulation, thus it is deemed obvious to add a plasticizer in the nail formulation.


Conclusion

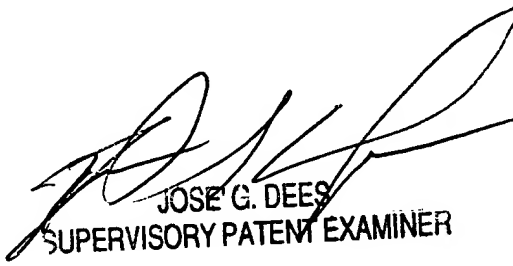
Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG


April 2, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
